

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KYLE D. WESSELLS and PETER F. KAIDO

Appeal No. 2004-0462
Application 09/915,861

ON BRIEF

Before FRANKFORT, STAAB, and NASE, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8, all of the claims pending in this application.

As noted on page 1 of the specification, appellants' invention relates to an improved all-electric truck trailer refrigeration system that receives its compressor drive motor

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power and all other electrical power from a single on-board electrical power source. That power source is identified on page 2 of the specification as being "at least one fuel cell." Appellants note that the present invention provides a transport refrigeration system with an electrical power system that provides the entire motor and control system power for the refrigeration system while at the same time meeting required limited space limitations. Independent claims 1 and 5 are representative of the subject matter on appeal, and a copy of these claims can be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claim are:

Peschka	4,386,309	May 31, 1983
Lake et al. (Lake)	6,118,099	Sep. 12, 2000

Claims 1 through 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lake in view of Peschka.

Rather than reiterate the examiner's statement of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make

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reference to the final rejection (Paper No. 5, mailed May 21, 2002) and the examiner's answer (Paper No. 11, mailed October 24, 2002) for the reasoning in support of the rejection, and to appellants' brief (Paper No. 10, filed October 7, 2002) and reply brief (Paper No. 12, filed November 26, 2002) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejection will not be sustained. Our reasons follow.

The Lake patent discloses a control system and strategy for a reversible HVAC system for heating a passenger compartment of a motor vehicle and, more particularly, an electric vehicle. Objectives of the system in Lake include 1) providing a system which minimizes energy consumption during a heating operation of the HVAC system and 2) providing a system that increases the

energy efficiency of the electric vehicle. One way the system of Lake meets the above-noted objectives is explained relative to the HVAC system shown in Figure 14 of the patent (see, col. 23, line 30, et seq.), wherein heat from the electric vehicle battery pack (224) is used to supplement heating of the passenger compartment.

Peschka discloses a vehicle that uses liquid hydrogen stored in tank (1) as a fuel for an internal combustion engine (9), and identifies a problem associated with the need for storing the liquid hydrogen at very low temperatures. More particularly, when using liquid hydrogen at very low temperatures as a fuel source, the problem arises that the liquid hydrogen evaporates as a result of heat flux from the surroundings and results in undesired consumption of the liquid hydrogen, as well as the problem of how to safely dispose of the gaseous hydrogen which is produced. The system described in Peschka provides a method of increasing the storage time of the liquid hydrogen tank (1) by taking the gaseous hydrogen evaporating in the tank and feeding it to a hydrogen fuel cell (14) and, by means of the electrical energy thus produced, driving a cooling unit (23) which cools the

liquid hydrogen tank and thereby reduces the thermal radiation reaching the tank and provides a substantial reduction in the evaporation rate inside the tank.

In support of the rejection of claims 1 through 8 under 35 U.S.C. § 103(a), the examiner urges that Lake discloses an electric vehicle having a compressor (76) driven by an electric motor, a fan (58) or (94) which is inherently driven by an electric motor, and a battery pack (224) for driving the HVAC system therein. The examiner observes that Lake does not teach or suggest a fuel cell for powering the HVAC system. To account for this difference, the examiner looks to Peschka, contending that this patent teaches a cooling unit (23) which is powered by a fuel cell, and concluding that it would have been obvious to "substitute, for the battery pack 224 of Lake et al, a fuel cell for powering the refrigeration system, in view of Peschka, for the purpose of providing a reliable, long-lasting source of power" (final rejection, page 2).

After having reviewed both Lake and Peschka, we must agree with appellants arguments in their brief and reply brief that there is no teaching, suggestion or incentive in Peschka or Lake

which would have led one of ordinary skill in the art at the time of appellants' invention to modify the electric powered vehicle of Lake in the manner urged by the examiner based on the teachings of the hydrogen fuel vehicle disclosed in Peschka. In that regard, it is our opinion that the examiner has used the hindsight benefit of appellants' own disclosure to pick and choose elements or concepts from the distinctly different systems of the applied references, and then selectively combine the chosen disparate elements or concepts in an attempt to reconstruct appellants' claimed subject matter. However, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

Since we have determined that the teachings and suggestions found collectively in Lake and Peschka would not have made the subject matter as a whole of claims 1 through 8 on appeal obvious

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to one of ordinary skill in the art at the time of appellants' invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S. C. § 103(a).

In accordance with the foregoing, the decision of the examiner rejecting claims 1 through 8 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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